



ORANGE COUNTY FAIRGROUNDS AUTHORITY AGENDA REPORT

MEETING DATE: SEPTEMBER 7, 2010

ITEM NUMBER: **OCFA
V-1**

SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION FOR THE ORANGE COUNTY FAIR AND EVENT CENTER LEASE AGREEMENT

DATE: AUGUST 30, 2010

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: KIMBERLY BRANDT, AICP, DIRECTOR

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT (714) 754-5270

RECOMMENDATION:

By adoption of the attached resolution, determine that the proposed lease agreement between the Orange County Fairgrounds Joint Powers Authority (JPA) and OC Fair and Event Center, L.P. is exempt from the California Environmental Quality Act.

BACKGROUND:

The JPA has authorized execution of a ground lease with OC Fair and Event Center, L.P. (OC Fair) for the 150-acre Orange County Fair and Event Center (OCFEC) located at 88 Fair Drive, subject to the completion of certain exhibits and negotiation on some remaining lease provisions. The JPA is considering the revised lease between the JPA and OC Fair and Event Center, L.P. The JPA's decision is a discretionary one, triggering the need to comply with the California Environmental Quality Act (CEQA). The City Council previously adopted a resolution finding the approval of the lease to be categorically exempt on a number of grounds from further environmental review under CEQA. Staff believes that the City of Costa Mesa was properly identified as the lead agency in connection with this determination; however, a member of the public has asserted that the JPA should have been the lead agency even though it has no permitting authority over any development or expansion which may occur at the site. In the exercise of caution, staff recommends that the JPA Board adopt a resolution finding the lease categorically exempt.

The OCFEC's operations have been exhaustively studied by both the City and the 32nd District Agricultural Association (DAA) over the years. In 2002, the City certified its 2000 General Plan Final Program Environmental Impact Report (EIR) which examined the OCFEC's operations and impacts at a programmatic level. In 2003, the DAA certified an EIR in connection with approval of its Master Plan. This project-level EIR analyzed the impacts associated with its expansion plans for the fairgrounds. Since the State adopted legislation in 2009 authorizing the sale of the OCFEC, the City has pursued the acquisition of the property.

In December 2009, the Planning Commission adopted a resolution (PC-09-42) that found the City's proposed purchase, acquisition, and use of the OCFEC property to be in conformance with the City's 2000 General Plan and that the proposed acquisition is categorically exempt from CEQA.

In February 2010, Council adopted Resolution Number 10-12 approving General Plan Amendment GP-09-01 which amends the "Fairgrounds" land use designation to further describe the existing land use and traffic context and permitted and prohibited land uses. Additionally, Council determined that the City's 2000 General Plan Final Program EIR and DAA's OCFEC Master Plan Final EIR constituted the required environmental documentation for the proposed amendment.

ANALYSIS

Although the proposed lease agreement is subject to CEQA, there are five exemptions to CEQA which are applicable, as discussed below. The JPA's approval to execute the ground lease will not lead to a change in the physical environment, as the ground lease consists of a conveyance of a leasehold interest from the JPA to OC Fair. The ground lease does not obligate or commit the JPA or OC Fair to undertake any activity which could lead to a change in the physical environment. Under the provisions of the ground lease, any possible subsequent action undertaken by either party to the ground lease cannot occur without compliance with all federal, state, and local laws and regulations, including CEQA. Further, the JPA has no permitting authority over any development applications which could be submitted. The ground lease specifically provides that it does not authorize any uses beyond what presently exists at the OCFEC, and any intensification of the authorized uses are subject to City review and approval and any other responsible public agency.

Exemptions:

1. CEQA Guidelines section 15301, Class 1, Existing Facilities. This exemption is applicable, to the leasing of public or private structures or facilities, involving negligible or no expansion of the use beyond what is existing at the time of the lead agency's determination. If the JPA authorizes the execution of the agreement, it would allow the lease of public structures and facilities to OC Fair. There would be negligible or no expansion of the use, as the ground lease does not authorize any changes to the OCFEC uses or facilities. No such changes can occur without City authorization, subject to subsequent compliance with CEQA and the City's normal regulatory processes. Therefore, this exemption is applicable to the proposed lease agreement.
2. CEQA Guidelines section 15323, Class 23, Normal Operations of Facilities for Public Gatherings. This exemption consists of the normal operation of existing facilities for public gatherings for which the facilities were designed, where there is a past history (at least 3 years) of the facility being used for the same or similar kind of purpose, and that there is a reasonable expectation that future occurrences would not represent a change in the operation of the facility. Examples of such facilities include racetracks, amphitheaters, and amusement parks. Possible execution of the ground lease does not authorize a change in the normal operation of the OCFEC (certainly an

example of an existing facility for public gatherings), and the OC FEC has been used as a fairgrounds for approximately 60 years. There is also a reasonable expectation that there will not be a change in the future operation of the facility, as the City's 2000 General Plan designates the OC FEC as "Fairgrounds" which is the overarching regulation for the property. Any future change in operations must be found consistent with the General Plan. Additionally, any future General Plan amendments regarding the Fairgrounds designation shall require a public vote for adoption.

3. CEQA Guidelines section 15325, Class 25, Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions. This exemption consists of transfers of ownership interests in land to preserve open space, agricultural, and historical resources. If the JPA approves authorization of the ground lease, the JPA would transfer an ownership interest in the OC FEC to OC Fair. Among other things, based upon the terms of the ground lease, this approval would facilitate preservation of the open space at the fairgrounds, as the site will remain a fairgrounds, the ground lease obligates OC Fair to continue the existing agricultural uses at Centennial Farms, and the ground lease requires compliance with the Costa Mesa Municipal Code before any "Cultural Resources" can be modified.
4. CEQA Guidelines section 15302, Class 2, Replacement or Reconstruction. This exemption applies to replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure repaired. Examples include replacement or reconstruction of existing utility systems, and replacing or reconstruction of public facilities to create earthquake resistant structures. The ground lease provides that some of the existing facilities have suffered from deferred maintenance, and also repair work may need to be undertaken, based upon a pending lawsuit against the State, where it is alleged that some of the Fairground facilities do not comply with the Americans with Disabilities Act (ADA). Although presently the scope and the magnitude of these required ADA and other repairs have not been determined, these repairs should not change the purpose of the facilities being replaced, or should not expand the capacity of these structures. The ground lease also provides that no such repairs can be undertaken until all Applicable Laws have been complied with, including CEQA.
5. CEQA Guidelines section 15061(b)(3), the "Common Sense" Exemption. The CEQA Guidelines include a general rule exemption which states that CEQA only applies to projects which have the potential for causing a significant effect on the environment. For this exemption to apply, the JPA must determine that it can be seen with certainty that there is no possibility that the authorization to execute the ground lease may have a significant effect on the environment. As discussed above, the proposed agreement conveys a ground lease interest from the JPA to OC Fair. The ground lease does not authorize any physical change in the environment. Physical change in the environment only may occur after there is compliance with all applicable federal, state, and local laws and regulations, including subsequent CEQA compliance.

Exceptions to the Exemptions:

The CEQA Guidelines include several exceptions to the application of the CEQA Categorical Exemptions to a proposed project. There are four potentially applicable exceptions, but as discussed below, staff has determined that they do not apply to the JPA's authorization of the proposed ground lease.

1. Cumulative impact. If the cumulative impact of successive projects of the same type, in the same place, over time, is significant, a CEQA exemption cannot be used. There is no such cumulative impact here, since the project, approval of execution of a ground lease, is unlikely to recur in the future. Also, as discussed above, execution of the ground lease is unlikely to result in any change in the physical environment.
2. Significant effect. A CEQA exemption cannot be used if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Approval of execution of the ground lease is unlikely to have a significant effect on the environment, and there are no unusual circumstances present.
3. Hazardous waste sites. A CEQA exemption cannot be used for a project located on any state-designated list of hazardous waste sites. The OCFEC is not on any such list.
4. Historical resources. A CEQA exemption cannot be used for a project which may cause a substantial adverse change in the significance of a historical resource. The ground lease does not mandate any modification of any historical structures at the fairgrounds. Rather, the ground lease prohibits any modification of "Cultural Resources" without compliance with Costa Mesa Municipal Code Section 13-200 et seq., which is Costa Mesa's cultural resources protection ordinance.

ALTERNATIVES CONSIDERED:

The Board's adoption of the attached resolution allows the JPA to authorize execution of the proposed ground lease agreement and avoids any claim that the wrong agency served as lead agency in the original Council action. Should the Board not take action on the resolution, the categorical exemption and resulting lease would potentially be vulnerable to legal challenge.

FISCAL REVIEW:

This determination does not require any fiscal review

LEGAL REVIEW:

The Authority's Attorney has reviewed the resolution and approved it as to form.

CONCLUSION:

CEQA authorizes the use of multiple exemptions in connection with approval of a project. Staff recommends that the JPA Board determine that a decision by the JPA to authorize execution of the ground lease for the OCFEC is exempt pursuant to five CEQA exemptions, by adoption of the attached resolution.



KIMBERLY BRANDT, AICP
Development Services Director

DISTRIBUTION: Executive Director
Authority Attorney
Assistant City Manager
Public Services Director
City Clerk (2)
Staff (4)
File (2)

ATTACHMENTS: 1 Draft Authority Board Resolution

File Name: 090710CEQAOCFEC	Date: 083110	Time: 9:00 a.m.
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RESOLUTION NO. 10-

A RESOLUTION OF THE BOARD OF THE ORANGE COUNTY FAIRGROUNDS AUTHORITY, A JOINT POWERS AUTHORITY FINDING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE BOARD OF THE ORANGE COUNTY FAIRGROUNDS AUTHORITY, A JOINT POWERS AUTHORITY, HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Final Program Environmental Impact Report (EIR) No. 1049 (State Clearinghouse Number 200031120) was prepared by the City of Costa Mesa for 2000 General Plan and certified by City Council in January 2002;

WHEREAS, Final Program EIR for the 2000 General Plan addresses a full range of environmental issues associated with the 20-year planning horizon of the 2000 General Plan (2020). All impacts resulting from implementation of the 2000 General Plan were minimized to a level of significance with the exception of impacts related to transportation/circulation, air quality, and noise;

WHEREAS, the City Council of the City of Costa Mesa adopted the 2000 General Plan on January 22, 2002. The General Plan is a long-range, comprehensive document that serves as a guide for the orderly development of Costa Mesa;

WHEREAS, the Fair Board of Directors of the 32nd District Agricultural Association (DAA) adopted a 10-year strategic Master Plan and Final EIR in 2003. In conjunction with the City's General Plan EIR, this document served as environmental documentation for General Plan Amendment GP-09-01, which was adopted by City Council on February 16, 2010;

WHEREAS, the City of Costa Mesa 2000 General Plan designates the project site at 88 Fair Drive as Fairgrounds, a General Plan designation that recognizes the unique land uses associated with the 150-acre Orange County Fair and Event Center property (OCFEC);

WHEREAS, on June 22, 2010 the City Council and the Orange County Fairgrounds Joint Powers Authority (JPA) approved a Purchase and Sales Agreement with the State of California for the OCFEC;

WHEREAS, the JPA is proposing to enter into a ground lease agreement of the OCFEC with OC Fair and Event Center, L.P. (OC Fair);

WHEREAS, the proposed lease agreement with OC Fair would help achieve the City of Costa Mesa's goal of preserving the Fairgrounds in Costa Mesa;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), and CEQA Guidelines, the proposed activity qualifies for the following five categorical exemptions:

1. CEQA Guidelines Section 15301, Class 1, Existing Facilities because activity involves the leasing of existing facilities with no expansion of the use beyond that existing at the time of the issuance of the exemption.
2. CEQA Guidelines Section 15323, Class 23, Normal Operations of Facilities for Public Gatherings because the activity involves the continuation of the normal operations of the existing facility for public gatherings for which the facility was designed, and that there is a past history of approximately 60 years of the facility being used for fair and event purposes.
3. CEQA Guidelines Section 15325, Class 25, Transfers of Ownership of Interest in Land To Preserve Existing Natural Conditions because the activity involves a ground lease agreement in order to preserve the existing fair and event center operations which are a significant recreational resource in the City of Costa Mesa and County of Orange; furthermore the activity facilitates preservation of the open space at the Fairgrounds, obligates the operator to continue the existing agricultural uses at Centennial Farms; and requires compliance with the Costa Mesa Municipal Code before any "Cultural Resources" can be modified.
4. CEQA Guidelines Section 15302, Class 2, Replacement or Reconstruction because this activity identifies that some of the existing facilities have suffered from deferred maintenance and repair work may need to be undertaken, and that these repairs should not change the purpose of the facilities being replaced, or should not expand the capacity of these structures. The ground lease also provides that no such repairs can be undertaken until all Applicable Laws have been complied with, including CEQA.
5. CEQA Guidelines section 15061(b)(3) because the activity does not authorize any physical change in the environment.

BE IT RESOLVED that, based on the evidence in the record, the Board of the Orange County Fairgrounds Authority, a Joint Powers Authority does hereby find the proposed lease agreement between the Orange County Fairgrounds Joint Powers Authority and OC Fair for the use of the OCFEC property for fair and event uses to be categorically exempt from the California Environmental Quality Act.

PASSED AND ADOPTED this ____ day of September, 2010.

ALLAN MANSOOR
Chair, Orange County Fairgrounds Authority

ATTEST:

APPROVED AS TO FORM:

AUTHORITY SECRETARY

AUTHORITY ATTORNEY

STATE OF CALIFORNIA)

)SS

COUNTY OF ORANGE)

I, JULIE FOLCIK, City Clerk and Secretary of the Orange County Fairgrounds Authority, hereby certify that the above Authority Resolution No. 10__ was considered at a special meeting of said Authority Board held on the ____ day of September, 2010, and thereafter passed and adopted as a whole at the special meeting of said Authority Board held on the ____ day of September, 2010, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal
of the Orange County Fairgrounds Authority this ____ day of _____, 2010